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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,261	12/03/2003	Herbert W. Harris	18184-0004 US	7783

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EXAMINER	
CARTER, KENDRA D	
ART UNIT	**PAPER NUMBER**
1617	

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10/09/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/728,261	HARRIS ET AL.	
	Examiner	Art Unit	
	Kendra D. Carter	1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11 July 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-58* is/are pending in the application.

4a) Of the above claim(s) *13-58* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-12* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *7/11/07*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

The Examiner acknowledges the applicant's remarks and arguments of July 11, 2007 made to the office action filed April 12, 2006. Claims 1-58 are pending and claims 13-58 are withdrawn.

The Applicant's arguments of the specification objection were found persuasive, and thus the objection is withdrawn.

The Examiner acknowledges Applicant's request that the obvious-type double patenting rejection of claims 1-12 be held in abeyance until agreement that a terminal disclaimer will be filed upon identification of allowable until agreement as to the patentability of the claims is reached. However, as such terminal disclaimers have not as-yet been filed, the provisional obviousness-type double patenting rejections over the co-pending application is being maintained.

For the reasons in the previous office action and below, the Applicant's arguments of the 35 U.S.C. 103(a) of claims 1-12 as being unpatentable over Korosi et al. (US 4,322,346) in view of Ito (Tokyo Ika Daigaku Zasshi, 1981, 39(3), 269-384), were found not persuasive, and thus upheld

Due to no new amendment to the claims and the Applicant's arguments were found not persuasive to overcome the 35 USC 103(a) or obviousness-type double patenting, the previous made rejections are restated below for convenience.

The Applicant's arguments are addressed below.

Double Patenting Rejection

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

1) Claims 1-12 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 10-14, and 16-20 of copending Application No. 10/578,522.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the reasons below.

The U.S. Application 10/578,522 discloses a method of treating an individual afflicted with an inflammatory disorder or epithelial tissue comprising administering an effective amount of at least one compound according to formula I as a racemic mixture (see claim 10) or as the (R)-enantiomer substantially free of the corresponding (S)-enantiomer (see claim 16), or a pharmaceutically acceptable salt thereof (see claim 1).

The compound of formula I wherein R^1 and R^2 are (C_1-C_7)hydrocarbyl, R^{3b}, R^{3c} and R^5 are O(C_1-C_7)hydrocarbyl, R^{3a} is H, and R^4 is OH, corresponds to the applicant's compound 1-(3,4-dimethoxyphenyl)-4-methyl-5-ethyl-7-methoxy-8-hydroxy-5H-2,3-benzodiazepine. In claims 14 and 20, 10/578,522 discloses a method comprising the applicant's specific compound stated above.

10/578,522 does not disclose a composition of the (S)-enantiomer substantially free of the corresponding (R)-enantiomer of 1-(3,4-dimethoxyphenyl)-4-methyl-5-ethyl-7-methoxy-8-hydroxy-5H-2,3-benzodiazepine and in which the compound is in 85%, 90% or 95% by weight.

To one having ordinary skill in the art would find it obvious to formulate a composition of the (R) or (S)-enantiomer of 1-(3,4-dimethoxyphenyl)-4-methyl-5-ethyl-7-methoxy-8-hydroxy-5H-2,3-benzodiazepine from the method of 10/578,522 because the method of treatment comprises administering the racemic mixture and the (R)-enantiomer of the same compound, thus rendering the composition obvious.

A composition of the (S)-enantiomer is obvious because the racemic mixture and the (R)-enantiomer is taught by 10/578,522. Stereoisomerism is well known to persons having ordinary skill in the art. A person having ordinary skill in the art would have been motivated to resolve the racemic mixture with the reasonable expectation of achieving substantially different pharmacological activity.

The weight percents of the composition would also be obvious because it is the normal desire of scientists or artisans to improve upon what is already generally known. Thus, the composition of the (R) and (S)-enantiomer of 1-(3,4-dimethoxyphenyl)-4-methyl-5-ethyl-7-methoxy-8-hydroxy-5H-2,3-benzodiazepine in 85%, 90% or 95% by weight is taught by 10/578,522.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Korosi et al. (US 4,322,346) in view of Ito (Tokyo Ika Daigaku Zasshi, 1981, 39(3), 269-384).

Korosi et al. teach the applicant's racemic compound as formula I wherein R = phenyl, R^1 = methyl (C_{1-3} alkyl), R^2 = ethyl (C_{1-4} alkyl), R^3 = hydroxyl, and R^4 = methoxy (C_{1-3} alkoxy) or a pharmaceutically acceptable salt on column 1, lines 12-43. The regioisomer of the Applicant's compound wherein 7 is hydroxyl and 8 is methoxy on the benzodiazepine ring is taught on column 8, example 23. The compounds can be converted into pharmaceutical compositions according to methods well known in the art, by admixing them with conventional pharmaceutical carriers, diluents and/or other additives (see column 5, lines 31-36).

Korosi et al. does not teach the specific compound 1-(3,4-dimethoxyphenyl)-4-methyl-5-ethyl-7-methoxy-8-hydroxy-5H-2,3-benzodiazepine in the specific (R)- or (S)-enantiomer and in which the compound is in 85%, 90% or 95% or more of the total weight of 1-(3,4-dimethoxyphenyl)-4-methyl-5-ethyl-7-methoxy-8-hydroxy-5H-2,3-benzodiazepine

Ito teaches the regioisomer of the applicant's racemic compound as formula TF 2 wherein 7 is hydroxyl and 8 is methoxy on the benzodiazepine ring (see page 4, Fig. 1). The compound is either suspended in carboxymethylcellulose or dissolved in a mixture

of propylene glycol, ethanol and water before being administered orally (see page 2, experimental materials, paragraph 2, lines 1-2 to page 3, lines 1-2, and page 9, paragraph 1, lines 1-2). The structure activity studies found that substituting the methoxy groups in the 7 and/or 8 positions of the 2,3-benzodiazepine ring with a hydroxyl group (see Fig. 1) brought about a decrease in its acute toxicity and had similar effects (see abstract, paragraph 2, lines 3-5 and page 24, conclusions, paragraph 4, lines 1-4). It was also found that the methoxy group at the 7 position of the 2,3-benzodiazipine ring plays the most important role (see page 24, line 2).

To one having ordinary skill in the art would find it obvious to formulate a composition of 1-(3,4-dimethoxyphenyl)-4-methyl-5-ethyl-7-methoxy-8-hydroxy-5H-2,3-benzodiazepine from the composition of Korosi et al. because the compositions comprise the same compound, and specifically the regioisomer of the Applicant's compound wherein 7 is hydroxyl and 8 is methoxy is taught. Additionally, Ito also teaches the regioisomer of the Applicant's compound wherein 7 is hydroxyl and 8 is methoxy, and substituting the methoxy groups in the 7 and/or 8 positions of the 2,3-benzodiazepine ring with a hydroxyl group (see Fig. 1) brought about a decrease in its acute toxicity and had similar effects (see abstract, paragraph 2, lines 3-5 and page 24, conclusions, paragraph 4, lines 1-4). Structure activity studies showed that the methoxy group at the 7 position of the 2,3-benzodiazipine ring plays the most important role (see page 24, line 2), thus rendering the composition of the Applicant's specific compound obvious.

One would be motivated to formulate a composition with the specific compound 1-(3,4-dimethoxyphenyl)-4-methyl-5-ethyl-7-methoxy-8-hydroxy-5H-2,3-benzodiazepine for the following reasons: (1) Korosi et al. teaches the general formula of the compound; (2) Korosi et al. teaches the regioisomer of the Applicant's compound wherein 7 is hydroxyl and 8 is methoxy; (3) Ito also teaches the regioisomer of the Applicant's compound wherein 7 is hydroxyl and 8 is methoxy, and that substituting the methoxy groups in the 7 and/or 8 positions of the 2,3-benzodiazepine ring with a hydroxyl group (see Fig. 1) brought about a decrease in its acute toxicity and had similar effects (see abstract, paragraph 2, lines 3-5 and page 24, conclusions, paragraph 4, lines 1-4); and (4) the methoxy group at the 7 position of the 2,3-benzodiazipine ring plays the most important role (see page 24, line 2). A novel useful compound that is isomeric with the prior art compound is unpatentable unless it possesses some unobvious or unexpected beneficial property not possessed by the prior art compound. In re Norris, 179 F.2d 970, 84 U.S.P.Q. 458 (C.C.P.A. 1970).

To one of ordinary skill in the art at the time of the invention would have found it obvious and motivated to formulate a composition of the (R) or (S)-enantiomer of 1-(3,4-dimethoxyphenyl)-4-methyl-5-ethyl-7-methoxy-8-hydroxy-5H-2,3-benzodiazepine because the fundamentals of optical activity and stereoisomerism are well known to persons having ordinary skill in the art. A person having ordinary skill in the art would have known how to resolve the racemic mixture and would have been motivated to do

so with the reasonable expectation of achieving enatiomers having substantially different pharmacological activity. It is well established that expected beneficial results are evidence of obviousness of a claimed invention just as unexpected beneficial results are evidence of unobviousness. In re Skoll, 523 F.2d 1392, 187 U.S.P.Q. 481 (C.C.P.A. 1975); In re Skoner, 517 F.2d 947, 186 U.S.P.Q. 80 (C.C.P.A. 1975; In re Gershon, 372 F.2d 535, 152 U.S.P.Q. 602 (C.C.P.A. 1967).

To one of ordinary skill in the art at the time of the invention would have found it obvious and motivated to formulate the weight percents of the composition for the following reasons: (1) upon separating the isomers, unless the mixture is 100% pure, percentages of the other enantiomer will be in the mixture, thus resulting in a composition with 85%, 90% or 95% of the desired enantiomer; and (2) it is the normal desire of scientists or artisans to improve upon what is already generally known provides the motivation to determine where in a disclosed set of percentage ranges is the optimum combination of percentages. See In re Boesch, 617 F.2d 272, 276, 205 USPQ 215, 219 (CCPA 1980) ("[D]iscovery of an optimum value of the result effective variable in a known process is ordinarily within the skill of the art." See, e.g., In re Baird, 16 F.3d 380, 29 USPQ2d 1550 (Fed. Cir. 1994); In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). *In re Paterson* Appeal No. 02-1189 (Fed. Cir. January 8, 2003).

Response to Arguments

Applicant's arguments filed July 11, 2007 have been fully considered but they are not persuasive.

> The Applicant argues that the *Norris* case cited by the examiner dates from 1950 and has not been cited in any judicial or Board of Patent Appeals and Interferences opinion for over 40 years. The examiner appears to rely principally on *Norris*, which is a *per se* rule. However, the Federal Circuit has expressly held that there is no such thing as the *per se* obviousness suggested by the examiner. The analysis of *Norris* has clearly been displaced by the analysis of obviousness under *Graham*, including the concept of *prima facia* obviousness. Similarly, the Federal Circuit has clearly stated that "generalization should be avoided insofar as specific chemical structures are alleged to be prima facie obvious one from the other." *In re Grabiak*, 769 F.2d 729, 731 (Fed.Cir.1985). Viewed as a whole, the Ito reference clearly would not have provided the motivation suggested by the examiner to make the 8-hydroxy compound of which pharmaceutical composition are presently claimed. Contrary to what is implied by the examiner, substitution of methoxy for hydroxyl did not improve the properties of tofispam. The data in Table 10 of Ito refute the examiner's suggestion that the 7-hydroxy and 8-hydroxy compounds should have been expected to have similar pharmacological properties because they are regioisomers. Compounds TF1 and TF2 in Ito are regioisomers of each other, yet they appear from Table 10 of Ito to have pharmacological properties that are completely different from each other. While acute toxicity was reduced, so also were the desirable pharmacological properties. This led Ito to conclude that the methoxy groups were important to the pharmacological properties of tofisopam, thus teaching away from making the 8-hydroxy compound as presently claimed.

The Examiner disagrees because first *In re Norris* is not a *per se* rule and second the date of the case is not relevent. Particularly, *Norris* states that "Whether novel chemical compounds are patentable over prior art isomers and homologues is a

question to be determined in each case." The Examiner has examined the case and found that the regioisomers of the Applicant's compounds are considered obvious for reasons stated in the office action and below. Particularly, Korosi et al. teach the general formula of the Applicant's compound within a small number of variations (see column 1, lines 15-43). The compounds can be converted into pharmaceutical compositions according to methods well known in the art, by admixing them with conventional pharmaceutical carriers, diluents and/or other additives (see column 5, lines 31-36). Korosi et al. specifically teach the regiosiomer of the Applicant's compound in example 23, in which 7 is hydroxyl and 8 is methoxy. Thus, Korosi et al. teaches the Applicant's compound in the racemic form in a composition, but does not specifically teach Applicant's compound in an example or within the specification. Ito provides the teachings that it is obvious to one skilled in the art to synthesize regioisomers of compounds like the Applicant's for the purpose of finding similar or better properties. Particularly, Ito tested the regioisomer of the Applicant's compound wherein 7 is hydroxyl and 8 is methoxy (see page 4, Fig. 1 and page 19, table 10), which is also the specific compound taught by Korosi et al. The compound is either suspended in carboxymethylcellulose or dissolved in a mixture of propylene glycol, ethanol and water before being administered orally (see page 2, experimental materials, paragraph 2, lines 1-2 to page 3, lines 1-2, and page 9, paragraph 1, lines 1-2). The structure activity studies found that substituting the methoxy groups in the 7 and/or 8 positions of the 2,3-benzodiazepine ring with a hydroxyl group (see Fig. 1) brought about a decrease in its acute toxicity and had similar effects (see abstract, paragraph 2,

lines 3-5 and page 24, conclusions, paragraph 4, lines 1-4). It was also found that the methoxy group at the 7 position of the 2,3-benzodiazipine ring plays the most important role (see page 24, line 2). Thus, one skilled in the art would be motivated to try the regioisomer of TF 2, in which the 7 position of the 2,3-benzodiazipine ring is a methoxy and the 8 position is a hydroxyl (Applicant's compound) because Korosi et al. teach both compounds to have activity and Ito teaches beneficial results. The tests of Ito clearly states that substituting the methoxy groups in the 7 and/*or* 8 positions of the 2,3-benzodiazepine ring with a hydroxyl group (see Fig. 1) brought about a decrease in its acute toxicity and had similar effects (see abstract, paragraph 2, lines 3-5 and page 24, conclusions, paragraph 4, lines 1-4). In a true comparison of similar compounds in which only the 7 or 8 position is substituted and the rest of the compound is identical, Ito fails to show a specific example, but provides motivation to try because of the above statement. The examples shown in table 10 are similar, but the concentration of change is pointed out at the 2,3-benzodiazipine ring in the 7 and 8 position that has the potential of rendering favorable results. The isomer, TF1 and TF2 are not considered a true comparison in the fact that the substitution is not at the critical 2,3-benzodiazipine ring, but on two different rings.

> The Applicant argues that the only rationale provided by the examiner that it would have been obvious to prepare compositions of (R) or (S) enantiomers with specified optical purity in view of Korosi and Ito are the assertions that it would allegedly have been obvious to determine where in a disclosed set of percentage ranges is optimum, and that it would have been obvious to discover the optimum value of a result effective variable. It is not clear to the applicants, however, to what "disclosed set of percentage ranges" the examiner is referring here- none of the compound

> in Korosi or Ito appear to have been prepared optically pure so there is no "disclosed set of percentage ranges". The examiner has also not cited any other reference making such a disclosure. There appears only to be the examiner's bar assertion that optimization of the optical purity would be obvious. Similarly, although the examiner states that it is obvious to optimize a result effective variable, the examiner has not provided any evidence showing that the optical purity of the compounds in the compositions of the invention would have been recognized by the person skilled in the art as being result effective.

The Examiner disagrees because the "disclosed set of percentage ranges" is that which is known in the art, which in regards to Korosi at least 50:50 ratio is taught because the compounds are racemic. In regards to a specific disclosure to optimize the optical purity of compounds, the Examiner relies on case law and as submitted by the Applicant, Islam et al. teach interactions of both isomers may differ at the active sites through which pharmacological action is mediated (see page 11 of response, first paragraph). Islam et al. goes on to teach and as stated on page 11 of the response that "Actions and levels of activity of the stereoisomers in vivo may also differ. All the pharmacological activity may reside in a single enantiomer, whereas several possibilities exist for the other enantiomer – it may be inactive, have a qualitatively different effect, an effect, an nearly identical qualitative pharmacological activity, qualitatively similar pharmacological activity but quantitatively different potency, or qualitatively different pharmacological activity". Thus, Islam et al. supports the case law that it is well established that expected beneficial results are evidence of obviousness of a claimed invention just as unexpected beneficial results are evidence of unobviousness. In re Skoll, 523 F.2d 1392, 187 U.S.P.Q. 481 (C.C.P.A. 1975); In re Skoner, 517 F.2d 947, 186 U.S.P.Q. 80 (C.C.P.A. 1975; In re Gershon, 372 F.2d 535,

152 U.S.P.Q. 602 (C.C.P.A. 1967). The above clearly shows motivation and obviousness to separate the enantiomers in expectation that either or the enantiomers may be inactive, have a qualitatively different effect, an effect, an nearly identical qualitative pharmacological activity, qualitatively similar pharmacological activity but quantitatively different potency, or a qualitatively different pharmacological activity.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

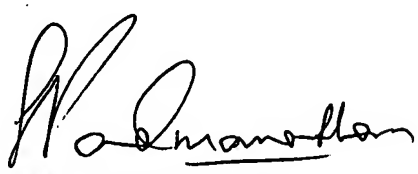
No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kendra D. Carter whose telephone number is (571) 272-9034. The examiner can normally be reached on 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on (571) 272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KDC



SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER